Michael G. Rhodes (Pro Hac Vice)
Benjamin F. Chapman (Pro Hac Vice)
COOLEY GODWARD LLP
4401 Eastgate Mall
San Diego, California 92121-1909
Telephone: (858) 550-6000

Cameron L. Sabin (9437)
STOEL RIVES LLP
201 S Main Street, Suite 1100
Salt Lake City, UT 84111
Telephone: (801) 328-3131

Attorneys for Defendant eBay, Inc.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

TETYANA NAZARUK,, Plaintiff, v. eBAY, INC.; ACE COINS, Defendants.	**MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, FOR FAILURE TO STATE A CLAIM** Case No. 2:06CV00242 The Honorable Dale A. Kimball

Pursuant to Rules 12(b)(3) and 12(b)(6) of the Federal Rules of Civil Procedure, defendant eBay, Inc. ("eBay"), hereby moves the Court to dismiss plaintiff Tetyana Nazaruk's (the "plaintiff") complaint (the "Complaint") on the basis that this venue is improper. Pursuant to the terms of a User Agreement between plaintiff and eBay, plaintiff must bring all disputes they have against eBay in Santa Clara County, California. As such, under Rule 12(b)(3), the Complaint should be dismissed.

In the alternative, eBay moves to dismiss the Complaint, without leave to amend, because the plaintiff has failed to state a claim upon which relief can be granted against eBay and any

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amendment to the Complaint would be futile. First, plaintiff's claims against eBay are barred by Section 230 of the Telecommunications Act of 1996 (47 U.S.C. § 230). Second, the Complaint fails to state a civil rights claim under 42 U.S.C. § 1983 or § 1985. Plaintiff's Section 1983 claim fails because eBay is not a state actor, nor do any of the actions detailed in the Complaint demonstrate that eBay acted under the color of state law. Plaintiff's Section 1985 claim also fails because the Complaint fails to allege that eBay was motivated by racial animus, or that eBay violated their right to be free from involuntary servitude or their right to interstate travel.

This motion is supported by the Memorandum in support of Motion to Dismiss for Improper Venue or, in the Alternative, for Failure to State a Claim; the Declaration of Allyson Willoughby; the pleadings; and any other evidence that may be adduced at a hearing on this motion.

DATED this 6th of June, 2006.

STOEL RIVES LLP

/s/ Cameron L. Sabin
Cameron L. Sabin

COOLEY GODWARD LLP

Michael G. Rhodes
Benjamin F. Chapman

Attorneys for Defendant eBay, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June 2006, I mailed a true and correct copy of the foregoing **MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, FOR FAILURE TO STATE A CLAIM**, postage prepaid, to:

Tetyana Nazaruk
274 W. 200 S. Apt. 43
Salt Lake City, UT 84101

/s/ Sharon L. Astin